

The Berryville Town Council held a work session and public hearing on September 27, 2006 in the Town Council Chambers, Berryville, Virginia.

The following were present:

Council -	Richard G. Sponseller, Mayor Harry Lee Arnold, Jr., Recorder Lawrence Russell, III Barry Nicholson Allen Kitselman
Absent -	Wilson Kirby
Staff -	Keith R. Dalton, Town Manager Desiree Moreland, Assistant Town Manager/Treasurer Christy Dunkle, Assistant Town Manager/Planner Neal White, Chief of Police David Tyrrell, Director of Public Utilities (via telephone) Rick Boor, Director of Public Works Celeste Heath, Town Clerk
Press -	Winchester Star: Bob Igoe Clarke Courier: Rebecca Maynard

Presentation – Proposed Increase in Sewer User Rates

Mayor Sponseller called the TOWN COUNCIL MEETING to order at 6:15 p.m.

Mayor Sponseller explained that any decision about raising sewer rates will not be arrived at easily.

Mr. Dalton then introduced Mr. William Johnson of Stearns & Wheeler, the engineering firm hired by the town to work on the sewer plant. Mayor Sponseller said that Mr. Johnson would first give a presentation about the wastewater treatment plant situation as it relates to sewer user rates and then public comment would be taken. He said that public questions would be banked and then answered after all citizens desiring to speak had spoken.

Mr. Dalton noted that Mr. David Tyrrell, the town's Director of Utilities, was present via telephone because he is away at training.

Mr. Dalton explained that this issue of raising sewer user rates came about because of discussions with Mr. Johnson regarding construction of a new wastewater treatment plant.

Mr. Dalton said that he first wanted to answer an accusation in a recent letter to the editor that he is trying to "blame DEQ" for this impending rate increase. He said that he is not blaming anybody; he is just stating the facts of where the mandate for a new wastewater treatment plant by 2010 is coming from. He said the new plant is required because localities have to meet enhanced nutrient reduction requirements to nearly the limits of technology. He said that DEQ has promulgated these

regulations because of agreements between the EPA and several states to protect the Chesapeake Bay. This has led DEQ to focus on wastewater treatment plants. He said that all localities with plants will be dealing with these issues.

Mr. Dalton said that he wants to make sure that everyone is heard and that all questions are answered because there has to be such a quick turnaround on this rate increase. He noted that every effort has been made to inform the public about this issue. He said that every utility customer received a mailing outlining the pertinent issues, that the required public hearing notices were placed in the newspaper and that interviews were given to the local press. He said that no one is taking this issue lightly.

Mr. Johnson then gave a presentation about the Berryville wastewater treatment plant and the process used to arrive at the proposed sewer user rates. He said that this proposed action springs from conversations with town staff during the interview process to hire an engineer for the wastewater treatment plant project. He said that town staff asked if there is anything they could do to be proactive and prepare for the new regulations. He said that he told staff that DEQ was in the process of establishing a grants process that would base the grant eligibility percentage on the sewer user rate that the town is charging at the time of application.

Mr. Johnson then explained that the mandate to clean up the Chesapeake Bay has lead Virginia to identify 127 significant dischargers that must face these new regulations. Berryville is one of those dischargers. He then discussed the history of and actors in the Chesapeake Bay cleanup effort.

He then explained the goals of the wastewater treatment plant project:

- Plan a phased expansion of the wastewater plant from 0.7 MGD as the first phase to 1.4 MGD for a future phase.
- Comply with nutrient limits of 4mg/l total nitrogen and 0.3 mg/l total phosphorous.
- Design the effluent pump system and force main.
- Evaluate existing facilities for potential reuse
- Achieve regulatory coordination and approvals

Mr. Johnson then talked about the existing facility. He said the original plant was built in 1936 and upgraded in 1953 and 1969. He said that the system has a low operating cost currently because solids are accumulating at the bottom of a lagoon. He said that this is the most basic wastewater treatment technology and that it has served the town well. He pointed out that. Like anything, wastewater treatment plants have life cycles and we are at the end of the treatment plant's life.

Mr. Johnson then laid out the main issues with the town's wastewater treatment process:

- The wastewater inflow characteristics will have to be upgraded.
- Solids will have to be removed and disposed of daily.
- New regulations are in place and the clock is ticking on compliance.
- Peak flows are a problem and the town has been struggling with I & I. He explained that the ideal is a constant flow of wastewater, not a flow that peaks when it rains.
- Funding issues:
 1. The dollar amount for theses projects are unimaginable to most communities.
 2. These will be the largest capital projects most communities will ever face.
 3. Grants are based on the cost related to nutrient removal.

Mr. Johnson then spoke about new treatment technologies including sequencing batch reactors, oxidation ditches, membrane bioreactors and Biolac systems.

Mr. Johnson then explained that grant eligibility is based on median household income which is approximated by DEQ at \$41,466 for Berryville. He said that this extrapolates to a reasonable sewer cost of approximately \$8.64 per 1000 gallons. He said that the current sewer rate is 53% of the reasonable rate and this would qualify the town for a 60% grant. He said that a rate increase to \$11 should, in accordance with draft criteria, qualify the town for a 90% grant. He then explained how these numbers were calculated. He said that borrowing \$12,000,000 would have a revenue requirement amounting to \$17 per 1000 gallons and borrowing \$8,000,000 would have a revenue requirement amounting to \$14 per 1000 gallons.

He said that the plant has an extremely low operating cost now and the new plant would have the additional costs of 3 to 4 new operators, more maintenance and sludge handling and disposal.

Mr. Johnson said the next steps would be:

- A rate increase of some kind.
- A preliminary engineering report.
- DEQ approval
- Facility design.
- Facility construction.
- A Certificate to Operate by the end of December 2010.

Mr. Dalton then explained the Berryville Area Plan's land use designations and that the town has committed to serve those future annexation areas with water and sewer and that is calculated into the DEQ allocation.

Mr. Dalton said that he had several questions for Mr. Johnson:

- Eighteen months ago it was estimated that a new wastewater treatment plant would cost approximately 7.5 M ... in March of this year that estimate was adjusted to 11.5 M... at this point you are projecting that the cost of the treatment plant will fall within the 15M to 20M range. What is at work here?

Mr. Johnson said that because of market conditions the cost of materials and labor have gone up but also there has been a lot of flux in the discharge regulations. He also noted that we are in the period of highest demand for contractors who build these plants.

He explained that of 127 plants subject to these regulations, 11 have been "asterisked" as a plant that won't meet demand capacity in 20 years. Mr. Nicholson asked how the town received this "asterisk". Mr. Dalton said that it is because the town argued for more loadings based on the obligations the town has under the Berryville Area Plan.

- Would you advise the Town to build a plant with a capacity of 450,000 GPD with plans to expand later?

Mr. Johnson said that he hadn't studied those numbers but that one day the plant will need the higher loading limit if based on 700,000 GPD and the extra loading will be lost if a CTO for a 700,000 GPD plant is not issued prior to December 31, 2010.

- Other localities have not raised their rates to anything resembling \$11.00. What is your take on this?

Mr. Johnson said that other localities just haven't raised their rates yet. Mr. Tyrell said that he is at a meeting of his counterparts from other localities from all over the state and that they are all very worried about the new requirements. He said that everyone is talking about the rate ranges we are talking about. Mr. Johnson said that localities that are looking at the numbers are coming up with rates of \$10 to \$20 per 1000 gallons.

- If Berryville built a new treatment plant 5 or 10 years ago in what position would we now find ourselves?

Mr. Johnson said that it might be best to answer that question with an example. He said that he is working with a community that built a new \$16,000,000 plant that went online in 1999. Last night, that jurisdiction approved \$12 million in improvements to the plant to incorporate new technologies to deal with new regulations.

- In relation to other jurisdictions do you consider the Town's I & I rate excessive?

Mr. Johnson said that he is not prepared to say it is excessive. He said that the benefit of reducing I & I is that it creates a more steady flow to the treatment plant.

Public Hearing – Proposed Increase in Sewer User Rates

Mayor Sponseller called the PUBLIC HEARING to order.

Fred Luhmann, 303 Ashby Court, asked if it is possible to look at building the new plant incrementally to make it adaptable to new technologies over time. He said that he would rather pay \$10 to \$20 less a month than paying the cost up front. He said that the cost of this rate adjustment to him would be about \$400 a year. He said that he would rather see the cost raised incrementally. He said that he would recommend the lowest increase now, while taking a more intensive look at the project. He then asked if the technologies are expandable in a modular way.

Rick Underwood, 15 Taylor Street, said that the biggest problem we have is that this project has been put on the back burner for too long. He said that the town should have been preparing funds for this project. He said that availability fees should go up 139% because user rates are for operations and maintenance and availability fees are for capital improvements. He said that this is typical Berryville to take this to a crisis level and then hit the "easy" button, the citizens. He asked the following questions:

- Is there a cap on sewer consumption?
- What is the basis for calculating the rate that will get the 90% funding and what will happen to the rate once you get funding?
- Does the \$11 rate assume grants will be received to cover 75% of money borrowed?

Wayne Webb, 510 Ewell Court, said that he appreciates the efforts of the public servants and elected officials because this is not an easy thing. He said that Mr. Johnson's presentation answered many of his questions. He said that he thinks that monthly billing is wasteful and that billing should be done quarterly. He also said that customers should not be charged for things they don't use and that many communities use a winter quarter to calculate the sewer usage rate. He then asked:

- Has there been any discussion of allowing residents to put gray water on lawns.
- Has there been discussion of giving users a break if they don't use garbage grinders?

- Has looking for another water source been considered given that the current water source delivers a lot of nutrients?

Mr. Webb then said that it is good that the town has been working on I & I. He said that the real tragedy is that in our lifetime all this cost will not materially change the nutrification in the Bay.

Bobby Broy, 402 East Main Street, said that he owns a carwash and asked if surrounding towns are going to raise their rates so he can compete with their car washes?

A.C. Echols, 400 Custer Court said that the public needs more data to understand the problem. He said that we need to know how much demand there will be from the development of the Berryville Area. He said that everyone should form a committee to put pressure on the U.S. Congress and every participant in Virginia and that the same thing should happen in other states. He said that if this isn't truly going to make a change, why should localities be put in this position? He said that this problem is much larger than the Berryville Town Council.

Rich Iden, 212 Henderson Court, said that most of his questions were answered in the presentation. He asked:

- If the Chesapeake Bay agreement was reached in 2000, why is this the first he is hearing of it?
- He asked why the current rates are so much higher than other places when we only have a basic treatment plant.

Ron Baker, 9 Byrd Avenue, said that the water and sewer rates were raised 6 years ago to repair broken sewer lines and that he hasn't seen any repairs. He asked what happened to that money. He asked what is going to happen to the manhole on his street that overflows and has to be roto-rootered?

The Town Clerk then read a letter from Margaret Barthel, 119 Chalmers Court (Attached).

September 26, 2006
P.O. Box 207
119 Chalmers Court
Berryville, Va.

Mr. Allen Kitchelman,

Because of a prior commitment I can not attend the public hearing this evening (Sept. 27th). Will you please read my comments addressed to the Council during the hearing? Thanks.

Member of the Town Council
Berryville, Va.

Please accept these comments as part of the public hearing on September 27, 2006 concerning the proposed increase in the sewer user rate:

1- As Clarke Countians we have experienced an increase in both county and town taxes due to the recent reassessment of property - with value of some properties increased, twice, three, or four times. The Bottom Line is even though tax rates were "adjusted", property owners are paying more to the county and town.

2- The proposal to increase the sewer user rate two (almost three) times the current rate represents another big demand to those on fixed incomes.

3- If the town has received proffers from developers, how has that money been used, knowing the situation with the town's water and sewer system?

I understand the need and urgency for updating or replacing the wastewater treatment plant, but I request that the Council carefully consider the effect on the townspeople of another large increase.

Thank you for your consideration.

Margaret H. Barthel

Mary Gott, 304 Dunlap Drive, said that Mr. Johnson talked about an affordable rate as related to median household income but that some consideration should be given to households with lower income.

Mr. Dalton said that since there was no further public comment he would first like to address Mr. Baker's comments. He said that user rates were last raised in 1996 and that there has been a

considerable amount of work done on the system. He said that this work has significantly decreased I & I and increased what the system bills versus what is treated. He then described a number of sewer line rehab projects throughout town.

Mr. Dalton then gave some historical background on the I & I problem. He said that there used to be significant inflows into the plants whenever it rained. He said that the town has spent a great deal of money rehabbing the wastewater collection system.

Mayor Sponseller then said that Mr. Johnson and Mr. Dalton would answer the questions raised from the citizen comment period of the public hearing.

- Are there modular solutions to the problem?

Mr. Johnson said that there are technologies that lend themselves to modularity but that is not to say that a 350,000 capacity plant can be built today and then add 20,000 gallons of capacity a year. He said that a 700,000 gallon capacity plant could be built and then 350,000 gallons of capacity could be added later.

Ted Bishop, address unstated asked how many people actually get the grant.

Mr. Johnson explained the grant process. He said that the Commonwealth will make a grant agreement and will pay the grant on a pro-rated basis as funds become available. This is because a legislature can't commit future legislators to funding. There was then a general discussion of state funding issues.

- Has an incremental increase in the user rate been considered?

Council member Nicholson noted that the \$11 rate is incremental. Mr. Johnson concurred.

- Why hasn't the town prepared for this? Why haven't availability fees been raised?

Mr. Dalton said that since 1998 sewer availability fees have risen from \$3300 to \$17,488 and will most likely be adjusted again shortly. He said that those fees have been put away in an account that now amounts to about \$2,700,000. Mayor Sponseller said that 18 months ago, it looked like the town was in pretty good shape with that amount of money in the bank.

Mr. Nicholson said that the town's availability fees are higher than any other jurisdiction except some in Loudoun County and that developers can only be charged for new demands their developments put on the system.

Rick Underwood, 15 Taylor Street, asked why surrounding localities charge hydrant fees and inspection fees to industry and Berryville doesn't.

Mr. Dalton said that Berryville does charge inspection fees, land development fees and engineering reviews are borne by the developer. Mr. Tyrell noted that inspection fees can only be used for inspections and hydrant fees can only be used for hydrants, these funds cannot be used for plant upgrades.

A.C. Echols, 400 Custer Court, said that since user rates haven't been raised since 1996, users have essentially been enjoying a free lunch for 10 years.

Russell Heikes, 205 Craigs Run Court, said that looking at the financials presented by Mr. Johnson, there is a million dollar surplus and that is a 40% cushion.

Mr. Johnson explained that this figure includes the assumption that there will not continue to be 50 to 60 new connections per year and thus that income will dry up. Mayor Sponseller said that it is not likely that there will be as many connections in the years to come. Mr. Johnson said that the other number built into that million dollars is the continued investment in inflow and infiltration improvements.

- Is the \$11.00 rate assuming a 75% grant?

Mr. Nicholson said that this rate could possibly qualify the town for a 90% grant and that is about a \$1,500,000 savings. Mr. Dalton said that this equates to a savings of \$100,000 a year in debt service.

Jody Macmillan, 417 Custer Court asked if the incremental manner of grant funding has been taken into account and if a risk analysis has been done.

Mr. Johnson said that DEQ has recommended that grantees borrow money against their grant until funds are released. He said that at least a dozen risk factors are calculated into the calculations.

Jody Macmillan, 417 Custer Court asked if the rate goes to \$15 what is the proper process to install a sewer meter. Mr. Nicholson said that residential sewer meters are not practical. The council may consider deduct or irrigation meters. She asked when she could get a deduct meter. He said that the Town Council will be discussing the issue but the rate increase is of the utmost importance now or the town could lose \$1,500,000. She asked why there can't be step increases. Mr. Nicholson said that this is a step. She said that this will be a hardship on seniors and low income citizens.

Mayor Sponseller said that this is a very hard thing to do and that the council is not happy about raising rates. Ms. Macmillan said that this is a lack of financial planning.

Mr. Dalton said this is not from a lack of planning. He said that 18 months ago the estimate for the new wastewater plant was at \$7,500,000 and the town has \$2,700,000 set aside and was expecting to finance about \$3,300,000. These numbers have changed dramatically and the town is now looking at borrowing \$12,000,000. Mr. Nicholson said that he has been a proponent of raising the user rates for some time but given the reaction to a \$.01 raise in tax rate 4 years ago, the issue has been deferred.

Mayor Sponseller directed staff to continue with the questions raised during the public comment period.

- Why aren't developers paying for this?

Mr. Dalton said that, as he stated previously, availability fees have been going up and probably will be raised again.

- What is the impact of monthly billing?

Mr. Dalton said this is a matter of how to best serve the customer with the rates going up. He said that this will break the bills into more manageable bites. He said that if someone has a leak with a sixty billing period it could be financially devastating.

- Has the use of a winter quarter been considered?

Mr. Nicholson said that this is a debate the council should have. He noted that it may be that if the total number of billed gallons is reduced then the rate would have to be raised. He noted that there are also stresses on the water treatment plant that will enter into any such discussion.

- What about the use of gray water?

Mr. Johnson said that there is nothing wrong with using gray water, but universal adoption with could cause groundwater contamination. Mr. Dalton asked if the Health Department would approve permanent plumbing for using gray water? Mr. Johnson said that he thinks it would not be allowed.

- Will a discount be considered for those who don't use garbage grinders?

Mr. Dalton said the Council could consider it.

- Should we look for a different water supply since the water source contributes so much nitrogen?

Mr. Johnson said that you are talking about fractions of milligrams. Mr. Nicholson said that Berryville used wells in the past but they became contaminated.

- Will the existing lagoon be kept to dampen I & I?

Mr. Dalton said that he is an advocate of keeping at least one lagoon.

- Why are rates higher here than surrounding towns?

Mr. Johnson said that all communities will soon face this same issue and that these costs are unimaginable.

Mr. Kurt Zimmerman, 122 Battletown Drive, asked why the rates are being raised now when the true cost isn't known. He said that this is starting to sound like the high school deal and that there hasn't been a plan.

Mr. Nicholson said that this gives the town the best chance to save money in the future. Mayor Sponseller noted that the Town Council has meetings on the second Tuesday of every month as well as Water and Sewer Committee meetings.

Mr. Johnson reiterated that although the Chesapeake Bay Agreement was made in 2000, it has taken six years for the regulatory process to tell localities what to do. Council member Nicholson said that it looks like we may eventually be required to build some sort of treatment plant for storm water runoff, and but there is no possible way to begin charging people for that expense now. We have to wait and see what transpires with those regulations.

Mayor Sponseller said that elected officials have a fiduciary responsibility to do what is best for the customers of the utility and the residents of Berryville. He said that the Town Council is not enjoying this, but it is their responsibility to make the right decision.

Russell Heikes, 205 Craigs Run Court, said that because the utility system is so small there are no economies of scale and that he thinks this is a price you pay for living in a small town.

Mayor Sponseller said that Mr. Echols idea about giving feedback to legislature is a good one.

Rich Iden, 212 Henderson Court, said that his question about why the rates are so high if we have a rudimentary treatment system was not answered. Mr. Dalton said that is because of the lack of economies of scale in a small system and because of the money spent on work on the collection system and the water distribution system. He said that the fees pay for the collection system as well as for the treatment of sewage.

- What have proffers been used for?

Proffers have been used for schools, transportation and emergency services.

- What about lower rates for lower income users?

Mayor Sponseller said that the idea warrants discussion. Mr. Nicholson said that this utility is a business and that if a discount is given then the rest of the users will have to absorb the cost. Someone in the crowd asked why not use tax money to lower cost. Mayor Sponseller said that Mr. Nicholson made a good point and that revenue from the general fund cannot be used to subsidize the utility as it must be run like a business.

Mayor Sponseller asked if there were any further questions or comments from the public. There being none, the public hearing was closed.

Discussion – Proposed Increase in Sewer User Rates

Mayor Sponseller asked about the time frame to act on this matter in regard to the grant. Mr. Johnson said that we know that the grant application is coming upon us and that the deadline was originally October 1. Because of delays with the grant agreement the date has been pushed back and DEQ is estimating that the date will be October 15 or November 1. Mr. Dalton said that we would want to new rate to become effective on October 1. Mr. Johnson said that in the past the criterion has been what the rate is on the day that you sign the grant.

Mr. Nicholson said that he doesn't see any way out of this and thinks it prudent fiscally to go for the \$11 rate. Mr. Russell said that he thinks it is wise to go for the \$11 rate effective on October 1 to make sure that we are eligible for the grant. Mr. Nicholson said that this is an incremental step because the rate is going to go higher than \$11.

There was a discussion of the criteria for determining high fiscal stress and how that can qualify a jurisdiction for more grants. Mr. Johnson said that there is no fiscal stress rating for towns, only for counties and cities. He said he is not sure how DEQ will deal with this. Mayor Sponseller said that because of the town's solvency he would think we would have no chance of being rated as having high fiscal stress.

Mayor Sponseller asked if a \$9 rate would qualify for the 90% grant. Mr. Kitselman said that it would not and that the council should go for the \$11 rate. Mr. Johnson said that it would make more sense to raise the rate higher than \$7 because that would at least qualify the town for a 75% grant.

Mr. Nicholson said that he is supposed to look at what is good for the town in the long run and that he thinks raising the rate to \$11 is the right thing to do. Mr. Kitselman said that this is the toughest decision the council has faced and that it is a very painful decision.

Mr. Johnson said that these numbers are based on his experience with other plants in Virginia and that he feels that the \$11 rate is the best estimate to get to the 90% grant range. Mr. Kitselman

said that he feels very confident that the Water and Sewer Committee chose wisely when they chose Mr. Johnson's firm and he is confident in the calculations.

Mr. Kitselman asked if the regulations change, could the rate be lowered? Mr. Johnson said that in that case, it would be wise to use the fund for I & I abatement.

On motion by Barry Nicholson, seconded by Allen Kitselman and passed the Council of the Town of Berryville, voted pursuant to Chapter 17, Article IV, Section 17-50 of the Code of the Town of Berryville, that effective October 1, 2006 charges for sewer services rendered by the Town of Berryville shall be eleven dollars (\$11.00) per one thousand (1000) gallons of water used.

Recorded vote:	Aye:	Richard G. Sponseller, Mayor Harry Lee Arnold, Jr., Recorder Lawrence Russell, III Barry Nicholson Allen Kitselman
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Absent -	Wilson Kirby
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Abstain -	None
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There being no further business, upon motion by Mr. Kitselman, seconded by Mr. Russell the Council meeting was adjourned at 9:50 p.m.

Richard G. Sponseller, Mayor

Harry Lee Arnold, Jr., Recorder

TOWN OF BERRYVILLE
AN ORDINANCE PRESCRIBING SEWER SERVICE CHARGES
PURSUANT TO CHAPTER 17, ARTICLE IV, SECTION 17-50
OF THE CODE OF THE TOWN OF BERRYVILLE

Date: September 27, 2006

Motion By: Barry Nicholson

Second By: Allen Kitselman

BE IT ORDAINED, by the Council of the Town of Berryville, pursuant to Chapter 17, Article IV, Section 17-50 of the Code of the Town of Berryville, that effective October 1, 2006 charges for sewer services rendered by the Town of Berryville shall be eleven dollars (\$11.00) per one thousand (1000) gallons of water used.

VOTE:

Aye: Richard G. Sponseller, Mayor
Harry Lee Arnold, Jr., Recorder
Lawrence Russell, III
Barry Nicholson
Allen Kitselman

Absent: Wilson Kirby

Abstain: None

SIGNED: _____
Richard G. Sponseller, Mayor

DATE: September 27, 2006

ATTEST: _____
Harry Lee Arnold, Jr., Recorder

DATE: September 27, 2006